

FILED

FEB 11 2003

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
DEPT. OF JUSTICE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BORDEN RANCH PARTNERSHIP, et al.,)	CIV. S-97-0858 GEB JFM
)	
Plaintiffs,)	
)	
v.)	
)	
UNITED STATES ARMY CORPS OF ENGINEERS, et al.,)	ORDER
)	
Defendants.)	
_____)	
)	
And Related Actions.)	
_____)	

The Ninth Circuit issued a "limited remand" in *Borden Ranch Partnership v. United States Army Corps of Engr's*, 261 F.3d 810 (9th Cir. 2001), requiring "the district court to determine what, if any, reduction in the [civil] penalty is appropriate" in this case in light of the government's concession on appeal that because of the ruling in *Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs*, 531 U.S. 159 (2001), it lacked jurisdiction over the vernal pool deep rippings.¹ Ten vernal pool Clean Water Act violations are

¹ The *Solid Waste* decision issued subsequent the findings and (continued...)

1 included in the 358 violations found in the November 8 Findings and
2 Conclusions.

3 Since the ten vernal pool violations were substantially of
4 the same character as the other violations, the amount of the penalty
5 imposed for the total violations should be reduced by ten. This
6 results in the finding that Tsakopoulos committed 348 violations of
7 the Clean Water Act, which exposes him to the maximum statutory
8 penalty of \$8,700,000.00. See Findings of Fact and Conclusions of Law
9 filed November 8, 1999, at 34 (holding the maximum penalty per
10 violation is \$25,000). For the reasons stated in the Findings of Fact
11 and Conclusions of Law, *id.* at 35-47, the civil penalty in this case
12 should be far less than the maximum statutory amount. Therefore, the
13 civil penalty is reduced to \$1,458,120.00, which is the same
14 proportionate reduction reflected in the November 8 Order.² The same
15 percentage reduction which was used in that Order in the decision
16 allowing Tsakopoulos to opt against paying a portion of this penalty
17 will also be applied. *Id.* at 47. Therefore, Tsakopoulos has
18 suspended payment of \$972,080.00 of this civil penalty by electing to
19

20
21 ¹(...continued)
22 conclusions issued in this action on November 8, 1999, which found
23 Tsakopoulos liable for ten Clean Water Act violations for vernal pool
24 deep ripping on the property. "*Solid Waste* [ruled] that the Corps'
25 rule extending the definition of 'navigable waters' under the Clean
26 Water Act to include intrastate waters used as habitat for migratory
27 birds exceeds the authority granted to the Corps under the Clean Water
28 Act." *Borden Ranch Partner.*, 261 F.3d at 816. The government
conceded on appeal of the November 8 Order that "*Solid Waste* precludes
Corps' authority over the vernal pool in dispute and . . . formally
[withdrew] its enforcement claim with respect to the pool." *Id.*

² The reduction is computed using 83.24%, which reflects the
reduction made in the November 8 Order.

1 complete the restoration measures identified in the injunctive relief
2 portion of the Final Order filed March 3, 2000.³ Tsakopoulos shall
3 pay a civil penalty of \$486,040.00 pursuant to 33 U.S.C. § 1319(d) as
4 a consequence of his violations of the Clean Water Act on the San
5 Joaquin County portion of the Borden Ranch during the period 1995 to
6 1997. This payment shall be made to the United States Treasury.

7 The Clerk of Court is directed to enter an Amended Judgment
8 in accordance with this Order.

9 IT IS SO ORDERED.

10
11 DATED: February 10, 2003

12 
13 GARLAND E. BURRELL, JR.
14 UNITED STATES DISTRICT JUDGE
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28 ³ Tsakopoulos is deemed to have made the same election
reflected in the Final Order filed March 3, 2000.

United States District Court
for the
Eastern District of California
February 11, 2003

* * CERTIFICATE OF SERVICE * *

2:97-cv-00858

Borden Ranch

v.

USACE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on February 11, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Edmund L Regalia
Miller Starr and Regalia
1331 North California Boulevard
Fifth Floor
Walnut Creek, CA 94596

SF/GEB

Edmund F Brennan
United States Attorney
501 I Street
Suite 10-100
Sacramento, CA 95814

H Michael Semler
US Department of Justice
Environmental Defense Section
PO Box 23986
Washington, DC 20026-3986

Jack L. Wagner, Clerk

BY: *JP Carlo*
Deputy Clerk